



Interactive Travel Services Association

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Statement of

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Executive Director

Interactive Travel Services Association

Concerning

HB 6626

Committee on Finance, Revenue and Bonding
General Assembly
State of Connecticut

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Madame Co-Chairs and Members of the Committee, the Interactive Travel Services Association¹ (ITSA) appreciates the opportunity to appear before you today, and express its serious concern about, and opposition to, HB 6626, "An Act Concerning the Imposition of the Sales Tax on Room Remarketers," which would impose a new tax on hotel "remarketers." My name is Art Sackler, and I am Executive Director of the association.

Connecticut has experienced a plunge in revenues for travel and tourism during the recession; a situation on which we would propose to work with you to reverse and recover. However, this bill would not only discourage such an effort, it would effectively pour salt in the wound of diminished tourism.

For this remarketers bill constitutes a new tax on tourism, on services and on the Internet that will be counterproductive to the state. It will dampen tourism, reducing the number of visitors to the state, and diminishing tax revenue. It will also cost jobs in the travel and related community, notably among hotel employees, who are among the most economically vulnerable workers and will be disproportionately impacted by the tax. We urge you to withdraw it from further consideration.

Connecticut confronts competition for tourist dollars. Massachusetts and Rhode Island, neither of which has such a tax, are direct competitors. This remarketer tax could cause bookings to be shifted from Mystic to Cape Cod or the Rhode Island beaches. Among other things, application of the tax in HB 6626 would raise prices, quite possibly lower tax revenue from visitors diverted to other states, create major paperwork for local small businesses, worsen the impact of the current tourism slump, and

¹ Founded in 1998, ITSA is the trade association for online travel companies (OTCs), as well as global distribution systems, and is their voice on matters of public policy. Through innovative technology and superior customer service, ITSA member companies provide consumers and suppliers with unprecedented travel and tourism options.

cause the loss of a significant number of hotel and other service industry jobs.

"Remarketer" applies broadly: not only to online travel companies (OTCs) but to travel agents, tour operators, convention planners, business travel agencies, and package vacation brokers who bring visitors to the city. It would increase costs and paperwork for small Connecticut travel agencies, and local "mom-and-pop" travel businesses which depend on hotel bookings, as you are hearing today from Jeff Sonenstein, a Connecticut travel agent, on behalf of the American Society of Travel Agents.

Similar taxes elsewhere have yielded counterproductive results. In New York, 80% of tour operators surveyed planned to reduce their New York City bookings due to its new tax ordinance, which was ranked the second-worst Internet law in the country by NetChoice, and now NY State is beginning to consider repeal of the remarketers tax it passed last year. After Columbus, GA and South San Francisco applied such a tax, much business was redirected outside those cities.

In Columbus, a study found the city is losing \$1.9 million in tax each year because in the individual judgment of some OTCs the cost of doing business there was too high for the returns, and therefore they referred business to neighboring cities without a "remarketer" tax. By comparison, Columbus has acknowledged in court filings that the total amount of back taxes under dispute in litigation is less than \$25,000 - barely 1% of the lost tax. When South San Francisco would have applied its city occupancy tax to OTCs, some companies made the same business determination, which had a similarly negative impact. After local hoteliers and businesses explained the impact on their businesses, the City Council there immediately rescinded the tax.

Relatedly, when San Francisco proper put such a tax on the ballot for a referendum last November, it was soundly defeated.

The general depressing effect on tourism from HB 6626, including the shifting of bookings to outside the state - and the increased cost of staying in Connecticut - could lead to the loss of potentially hundreds of hotel jobs and other service industry positions. With the state's unemployment rate stubbornly static at 9%, Connecticut can ill afford any further job loss, especially caused by unwise legislation.

This new tax could also dramatically affect package tours to the state. Because the law requires taxes to be collected on the final price of the hotel portion of all bookings, tour operators and travel agents would be left with little choice but to reduce or eliminate bundled tour packages (hotel plus air, transfers, meals, and/or entertainment) or face potential audits over the breakdown of fees associated with those packages.

No municipality in the country has successfully passed a "remarketer" tax that realized the intended results. Instead, the handful of attempts made in this area have led to confusion and protests from the tourism industry, notable drops in visitors, and legal challenges.

So, this is not about "closing a loophole." Bill 6626 would create an entirely new tax on nearly every participant in the travel value chain. This new tax would effectively pull the welcome mat out from under the travel and tourism industry -- damaging that critical industry, raising hotel prices, reducing the number of visitors, creating major paperwork with particular effect on small travel businesses, costing jobs, largely among the most economically vulnerable, and worsening the impact of the current slump in the process.

To expand on the forgoing, if HB 6626 were enacted, it would cause several adverse policy and economic effects, and create federal Constitutional implications. In particular:

- (1) it would impose new taxes on services, which would make Connecticut one of the most aggressive states in the taxation of services;
- (2) it would establish new taxes that focus exclusively on companies that utilize the Internet;
- (3) it would appear intended to impose new taxes on travel and tourism;
- (4) if it were effective, it stands to reduce tourism and quite possibly result in a net loss of revenue, and jobs, to the state;
- (5) it would have an adverse impact on many Connecticut businesses, largely small ones; and
- (6) it could increase costs to potential tourists interested in visiting the state's attractions, thereby decreasing demand for tourism services.

To underscore the above, studies have shown that increasing the cost of travel and tourism by raising taxes leads to diminished room sales and associated visitor spending. For example, the American Hotel and Lodging Association used econometric analysis to determine that for a 2.0% increase in hotel occupancy tax, there is a corresponding 2.4% decrease in consumer expenditures. So, not only would it be self-defeating for the collection of additional tax revenue, it would be counterproductive to the interests of consumers.

The successful “merchant model” of handling hotel rooms enables consumers to book their own rooms online, and allows hotels to fill rooms that often would otherwise go empty and would not be producing any tax revenue for Connecticut. At the click of a mouse, consumers see multiple hotels in the state that they can compare on price, location, amenities and more. On the other side of the coin, Connecticut hoteliers – especially small to mid-sized ones with limited name recognition outside the state, as you are hearing today from Chris Middleton for the Independent Lodging and Industry Association -- obtain instant access to literally millions of consumers who otherwise might not know they even exist.

In this model, the hotel sets a rate for its rooms through a negotiation with an OTC. That rate then can be seen, with taxes and service fees included in a total price, by the millions who patronize ITSA members’ sites. When a consumer shops various hotel accommodations offerings and reserves a room, he or she is using the service for which the online site charges. This huge audience comes to these sites only because of the many millions of dollars invested by the OTCs in versatility and ease of use, technology, advertising and other services, and to ensure that their content is literally up-to-the-minute. That investment is ongoing to maintain these sites at a level that is state-of-the-art.

The hotel bills the OTC for the negotiated room rate and all applicable taxes on that room rate, which the OTC sends back to the hotel – and the hotel, as the taxpayer, is responsible for remitting the taxes to the appropriate taxing jurisdictions.

Fees charged by OTCs are not for hotel rooms. Rather, they are for the services of facilitating the booking of hotel rooms. As found by numerous courts, including the Fourth and Sixth Circuit

Federal Courts of Appeals² -- the only two Circuits that have examined the issue to date -- OTCs are not owners or operators of hotels; their services are to enable the booking of hotel rooms. (Both courts confirmed that OTCs are not subject to hotel occupancy taxes.)

Moreover, HB 6626 may raise federal Constitutional implications. Many OTCs, travel agents, tour operators and others, book hotels in Connecticut from, say, Illinois, for travelers located in, for example, California. Absent a physical nexus with the state for a specific taxpayer, imposition of such a tax will run afoul of the Commerce Clause.³ We believe that attempting to impose the tax in HB 6626 on out-of-state companies with no nexus with Connecticut very much risks that outcome.

The bottom line of successfully imposing these new taxes would be higher hotel prices, fewer rooms sold as a result in the jurisdictions adding the tax, and negative impacts on the hotels, jobs, OTCs or other intermediaries, taxing authorities and, especially, consumers. Importantly, it would almost certainly cause individual OTCs to evaluate dispassionately the cost of doing business in Connecticut, including the burden of administering the tax, and whether promoting competing destinations in some instances would be necessary. Clearly, with Massachusetts and Rhode Island adjacent to Connecticut, many hotel properties there could be beneficiaries of that necessity.

In addition, the “multiplier effects” that benefit Connecticut’s economy – for restaurants, movie theaters, museums and other tourist favorites, clothing stores, etc. -- from the incremental

² *Pitt County v. Hotels.com, L.P.*, 553 F.3d 308 (4th Cir. 2009)
Louisville / Jefferson County Metro Gov't v. Hotels.com, L.P., 590 F.3d 381 (6th Cir. 2009)

³ So ruled the U.S. Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), which remains the law today.

travelers and tourists brought by the OTCs would be seriously jeopardized.

What's more, these taxes would be imposed on companies that exist solely because of the Internet. At a time when the federal government has placed a moratorium on multiple and discriminatory Internet taxes through 2014, such an approach would fly in the face of the policy embodied in the Internet Tax Freedom Act -- encouraging the Internet to be an engine of economic growth -- and perhaps even the bans themselves.

And, the impact would be felt not only by large, national companies, but by many small travel agencies and others in Connecticut, as you are hearing today from ASTA. These agencies also offer online booking of travel and serve as intermediaries. The effect on their relatively low revenues and comparatively thin margins could be substantial.

Moreover, there would be a noticeable impact on jobs. Fewer rented rooms will mean reduced revenues for hotels, and reduced need and affordability for workers. The heavy majority of hotel workers are blue collar, and they are likely to be the first to suffer job losses.

It is important to note that OTCs collectively spend well over a billion dollars each year in travel promotions to destinations everywhere, including in Connecticut. Those promotions are in every medium -- broadcast, Internet, print -- as well as on their own sites. They are of great value to the destinations, helping to drive business to those locations, and are at no cost to those destinations. However if a jurisdiction develops an inhospitable business climate, it very possibly may cause a dispassionate business-judgment based reconsideration, and perhaps recalibration, of where those promotion dollars are aimed.

ITSA urges you to reconsider proceeding with HB 6626, and the potential problems it would precipitate for jobs and the state's coffers, OTCs and other travel intermediaries, and, most importantly, consumers. ITSA members would strongly prefer to work with you to promote and stimulate travel and tourism to Connecticut even more vigorously than they do today. But the imposition of this tax would virtually ensure that that preference would not be realized.

Thank you and I would be pleased to answer any questions you may have.